

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Lewis Welsh, #312256,)	C/A No. 4:13-296-GRA-TER
)	
Petitioner,)	
)	
vs.)	
)	REPORT AND RECOMMENDATION
Warden Leroy Cartledge,)	
)	
Respondent.)	
)	

Petitioner, appearing *pro se*, filed his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254¹ on February 4, 2013. Respondent filed a motion for summary judgment on April 22, 2013, along with a return, supporting memorandum and exhibits. (Docs. #18 and #19). The undersigned issued an order filed April 23, 2013, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising Petitioner of the motion for summary judgment procedure and the possible consequences if he failed to respond adequately. (Doc. #20).

On April 24, 2013, Petitioner filed a motion for default judgment. (Doc. #22). Within this motion, Petitioner contends that the habeas corpus petition was electronically served on the Office of the Attorney General on February 21, 2013. Petitioner asserts that Respondent has failed to “answer, defend or ask for an enlargement of time w/in the 50 days.” Id.

It is recommended that this motion for default judgment be denied. Based on the court’s docket sheet, Respondent filed a motion for an extension of time on April 15, 2013. (Doc. #14). This motion for extension of time was granted by order on April 15, 2013, giving Respondent up to and

¹ This habeas corpus case was automatically referred to the undersigned United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 19.02 (B)(2)(c), DSC. Because this is a dispositive motion, this report and recommendation is entered for review by the district judge.

including May 15, 2013, to file the return. (Doc. #15). Respondent filed the return, motion and memorandum on April 22, 2013. (Docs. #18 and #19). Accordingly, it is recommended that Plaintiff's motion for default judgment be denied.²

CONCLUSION

Based on the above reasoning, it is RECOMMENDED that Plaintiff's motions for default judgment (doc. #22) be DENIED.

Respectfully submitted,

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

April 24, 2013
Florence, South Carolina

The parties' attention is directed to the important notice on the next page.

² Pursuant to the Roseboro Order of April 23, 2013, Petitioner has until May 28, 2013, to file a response to the motion for summary judgment or his case may be dismissed for failure to prosecute pursuant to Rule 41b of the Federal Rules of Civil Procedure.